

REMARKS

Claims 1-7, 9-12, 22, 24, 26-33 and 35-36 are pending in the present application including independent claims 1 and 27. Claims 8, 13-21, 23, 25, 34, and 37-65 were previously canceled.

In the Office Action, claims 1-4, 6, 11, and 27-30 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Wodka et al. (U.S. Publication 2003/0171984) in view of Litwin (U.S. Patent 6,374,228), including independent claims 1 and 27. However, it is respectfully submitted that independent claims 1 and 27 patentably define over the cited references, either alone or in any proper combination.

Independent claim 1 requires an electronic rebate system in which the claimed electronic tag devices are associated with products that are made available for purchase, with each distinct product having at least one electronic tag physically connected thereto. An electronic reading device is configured to retrieve information from the respective electronic tags when the products are presented for purchase. A first computer is in communication with the electronic reading device to retrieve the product identification information stored in the electronic tags at a point of sale of the products. A manufacturer's rebate applies solely as a result of purchase of the product. In accordance with the pending claims, the customer is entitled to the manufacturer's rebate simply for purchasing the product. There are no other conditions attached to the rebate. The customer simply presents the product at the point of sale with the electronic tag attached thereto. The first computer retrieves the product information from the tag and communicates the rebate claim information to a second computer

substantially contemporaneous with purchase of the product. The second computer processes and validates a rebate claim with the rebate claim information, and transfers the status information related to the rebate to the first computer, which communicates the status to the customer. Independent claim 27 provides a method associated with the system as described above with respect to independent claim 1.

By contrast to the present claims, Wodka et al. is not directed to an electronic rebate system. Rather, Wodka et al. “provides a means that allows RFID devices to be attached to items, which allows for a negotiation interaction between the consumer, item/product, and the store.” Para. [0021]. In this regard, Wodka et al. describes that a consumer is provided with a user device (such as upon entering a store) that will permit the consumer and the in-store system to interact. Para. [0031]. As the consumer utilizes the user device to contact items in the store, the display of any incentive or information to the consumer occurs from the RFID device or in-store server “directly to the user device” each time a RFID device is presented to the user device. Para. [0032]. At the point-of-sale terminal, the user device downloads the actual selected items to the terminal to determine the final incentive value awarded. *Id.* Alternatively, the user device reprograms the RFID device with the incentive value awarded. *Id.*

It is respectfully submitted that such a system does not teach or suggest an electronic tag associated with a product being purchased by a customer at a point of sale and for which a manufacturer’s rebate applies solely as a result of purchase of the product, as required by the presently pending claims. In sharp contrast to the pending claims, Wodka et al. describes a system in which “the price of an item can be reduced to influence the consumer to place the item into his shopping basket.” Para. [0036]

(reference numerals omitted). The price reduction described in Wodka et al. happens as part of a so-called "price negotiation" rather than occurring solely as a result of the purchase of a product, as required by the pending claims. Such a price reduction can be dictated by pre-determined factors, such as the consumer's prior buying pattern.

Para. [0037]. The price reduction is downloaded onto the user device for presentation at checkout or programmed onto the RFID device using the user device. *Id.* Indeed, the price reduction may or may not even result in the consumer purchasing a product. *Id.* As such, Wodka et al. fails to teach or suggest a system in which *a manufacturer's rebate applies solely as a result of purchase of the product*, as required by the pending independent claims.

Furthermore, the Office Action acknowledges that Wodka et al. "does not explicitly disclose" certain other limitations of the pending claims. Page 3, September 2, 2009 Office Action. The Office Action cites Litwin and claims "it would have been obvious to one having ordinary skill in the art at the time the invention was made to add rebate claim information, validation of rebates and rebate information transfer between computers to the system of Wodka et al. in order to effectively manage the incentive system." Page 4, September 2, 2009 Office Action. However, it is respectfully submitted that Litwin fails to remedy the deficiencies of Wodka et al.

In this regard, Litwin describes a system wherein customers are "awarded" for advertising products. In particular, an advertisement display, such as a bumper sticker, is affixed to a person's vehicle. Col. 3, lines 49-59. The display includes an identification portion, which may be a barcode or other computer scannable code. Col. 3, lines 60-67. When the vehicle drives into a participating retail establishment, such as

a gas station, a scanner at the establishment identifies the presence of the display. *Id.* Then, in response to the particular identification code and subsequent communication with a database computer system, the person may receive a discount towards the purchase of a product at the establishment, such as a discount on gas at a gas station. Col. 4, lines 1-8. It is important to understand that, with this type of incentive or award program for displaying an advertisement, the customer is not entitled to a manufacturer's rebate that attaches to the product and solely as a condition of purchasing the product. In other words, a person cannot drive into the gas station and receive a manufacturer's rebate on gas simply because they purchase gas. The product (i.e. gas) does not have an electronic tag attached thereto containing product rebate information that is processed for a rebate at the time of purchase. The only "tag" or other identification information in the system of Litwin is the code contained in the advertisement display. This code does not constitute an electronic tag that is physically connected to products being purchased at a point of sale. In fact, Litwin describes the award as "compensation" for the advertisement services (column 5, lines 32-51). At column 4, lines 1-8, Litwin describes the incentive as "a cash discount" and "a rebate." However, it is absolutely clear from a complete consideration of the reference in its entirety that the person is actually receiving compensation for displaying the advertisement display, and that such compensation has absolutely nothing to do with a manufacturer's rebate that attaches to a particular product solely as a condition of purchasing the product. Accordingly, it is respectfully submitted that neither Litwin nor Wodka et al. teach or suggest an electronic tag associated with a product being purchased by a customer at a point of sale and for which a manufacturer's rebate

applies solely as a result of purchase of the product, as required by the presently pending claims.

Dependent claims 2-7, 9-12, 22, 24, 26, 28-33, 35, and 36 only further patentably define the inventions of independent claims 1 and 27, and are allowable for at least the reasons set forth above.

Applicants respectfully submit that all pending claims patentably distinguish over Wodka et al. and Litwin, either alone or in any proper combination with one another or any of the other references cited in the §103 obviousness rejections of the dependent claims. Applicants have carefully considered the additional references, including Postrel (U.S. Publication 2005/0021400), Algiene (U.S. Publication 2003/0229540)¹, Packes Jr., et al. (U.S. Patent 7,006,983), Nguyen (U.S. Publication 2003/0220839), McCarthy (U.S. Patent 5,202,826), Scroggie et al. (U.S. Patent 6,185,541), and Lane et al. (U.S. Patent 7,221,258), and such references do not correct the deficiencies discussed above with respect to the Wodka et al. and Litwin.

In summary, Applicants respectfully submit that the present claims patentably define over all of the prior art of record for at least the reasons set forth above. As such, it is believed that the present application is in complete condition for allowance and favorable action, therefore, is respectfully requested. Examiner Henry is invited and encouraged to telephone the undersigned, however, should any issues remain after consideration of this Amendment.

¹ Applicants believe that due to a typographical error, Algiene was cited as US Publication No. 2005/0229540 in the Office Action.

Application Number: 10/748,118
Amendment Dated October 7, 2009
Response to Office Action of September 2, 2009

ATTORNEY DOCKET NUMBER: **KCX-732 (19571)**

Please charge any additional fees required by this Amendment to Deposit

Account No. 04-1403.

Respectfully submitted,

DORITY & MANNING, P.A.

10/08/09
Date

Stephen E. Bondura
Stephen E. Bondura
Registration Number: 35,070

P.O. Box 1449
Greenville, SC 29602
Telephone: (864) 271-1592
Facsimile: (864) 233-7342